

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

<b>IN RE: SKS CONSTRUCTION, INC.</b>	)	<b>Case No. 21-31862-KLP</b>
	)	
<b>Debtor.</b>	)	<b>Chapter 11</b>
	)	
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<b>SKS CONSTRUCTION, INC.</b>	)	
	)	
<b>Plaintiff,</b>	)	
<b>v.</b>	)	<b>Adversary Proceeding</b>
	)	<b>No. 21-03097-KLP</b>
<b>GARDNER STATION, LLC</b>	)	
	)	
<b>Defendant.</b>	)	
	)	
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**PLAINTIFF’S MOTION FOR ATTORNEY’S FEES  
AND MEMORANDUM IN SUPPORT**

SKS Construction, Inc. (“SKS”), Debtor and Plaintiff in the above-captioned matter, moves the Court pursuant to FRCP 26(c)(3) (made applicable to this adversary proceeding by FRBP 7026) and FRCP 37(a)(5) (made applicable to this adversary proceeding by FRBP 7037) to enter an order directing Defendant and/or its counsel pay to SKS attorney’s fees in the amount of \$2,800.00, and in support thereof states as follows:

1. On March 27, 2022, SKS filed its Motion for Protective Order, seeking to forbid or quash certain written discovery served upon it by Defendant as untimely, and

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*Counsel for the Debtor/Plaintiff*

seeking to forbid a late-noticed corporate deposition. *See* Motion for Protective Order [ECF Docket No. 13].

2. On March 30, 2022, the Court held a hearing upon the Motion for Protective Order at which Defendant had an opportunity to appear but did not do so. The Court granted the Motion for Protective Order in all respects, but reserved ruling on the issue of attorney's fees in order to permit Defendant and its counsel an opportunity to be further heard on that issue.

3. FRCP 26(c)(3) provides in relation to discovery protective orders that "Rule 37(a)(5) applies to the award of expenses.

4. FRCP 37(a)(5) provides in turn:

*(5) Payment of Expenses; Protective Orders.*

*(A) If the Motion Is Granted (or Disclosure or Discovery Is Provided After Filing).* If the motion is granted—or if the disclosure or requested discovery is provided after the motion was filed—the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees.

5. The Court granted the Motion for Protective Order, which was unopposed by Defendant. The Motion for Protective Order was necessitated by the conduct of Defendant and/or its counsel for the reasons set forth therein. The Court therefore "must" require payment of reasonable attorney's fees pursuant to FRCP 37(a)(5).

6. SKS requests an award of \$2,8000.00 in attorney's fees payable within thirty (30) days, based upon the Declaration of David G. Browne, attached hereto as **Exhibit 1**.

## **NOTICE OF MOTION**

PLEASE TAKE NOTICE that, on March 30, 2022, SKS Construction, Inc. filed its Motion for Attorney's Fees and Memorandum in Support ("Motion") with the United States Bankruptcy Court for the Eastern District of Virginia, Richmond Division (the "Court").

**PLEASE TAKE FURTHER NOTICE that your rights may be affected. You should read the Motion carefully and discuss it with your attorney, if you have one in this case. (If you do not have an attorney, you may wish to consult one).**

**PLEASE TAKE FURTHER NOTICE** if you do not want the Court to grant the relief requested in the Motion, or if you want the Court to consider your views on the relief requested therein, then, by **April 13, 2022** (the "Response Deadline"), you or your attorney must:

- ☒ File with the Court, either electronically or at the address shown below, a written response to the Motion pursuant to Rule 9013-1(H) of the Local Rules of the United States Bankruptcy Court for the Eastern District of Virginia. If you mail your written response to the Court for filing, you must mail it early enough so the Court will **receive** it on or before the Response Deadline.

**If a response is not properly and timely filed and served, the Court may deem any opposition waived, treat the Motion as conceded and enter an appropriate order granting the requested relief without further notice or hearing.**

Clerk of the Court  
United States Bankruptcy Court  
701 East Broad Street  
Suite 4000  
Richmond, VA 23219

**PLEASE TAKE FURTHER NOTICE** that if you do not want the Court to grant the relief requested by the Motion, you must also attend a hearing on **APRIL 20, 2022, AT 2:00 P.M.**, via video conference, before the Honorable Keith L. Phillips, United States

Bankruptcy Judge, United States Bankruptcy Court for the Eastern District of Virginia,  
Richmond Division, 701 East Broad Street, Room 5100, Richmond, Virginia 23219.

**REMOTE HEARING INFORMATION:**

Due to the COVID–19 public health emergency, no in-person hearings are being held.

This hearing will take place remotely through Zoom on the date and time scheduled herein.

To appear at the hearing, you must send, by email, a completed request form (the “Zoom Request Form”), which is available on the Court's internet website at [www.vaeb.courts.gov](http://www.vaeb.courts.gov), on the page titled, “Temporary Emergency Provisions Regarding ZoomGov Remote Proceeding Access Information.” Email your completed Zoom Request Form to the email address listed for the Judge assigned to the case. Following receipt of your Zoom Request Form, Court staff will respond to the email address from which the request was submitted with additional information on how to participate through Zoom.

\*\*\*The email address shall be used only to submit Zoom Request Forms. No other matters or requests will be considered by Court staff, and under no circumstances will any such matters or requests be brought to the Judge’s attention. Failure to comply with these instructions may result in appropriate action, including but not limited to the imposition of sanctions.\*\*\*

**PLEASE NOTE:** You MUST submit the Zoom Request Form no later than two (2) business days prior to this hearing. Any documentary evidence the parties wish to present at the hearing must be filed with the Court in advance of the hearing.

DATED: 3/30/2022

**SKS CONSTRUCTION, INC.**

By: /s/ David G. Browne  
Counsel

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*Counsel for the Debtor*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 30th day of March, 2022, a true and accurate copy of the foregoing Motion for Attorney's Fees and Memorandum in Support was filed via the ECF system and served thereby on all parties receiving notice via the ECF system.

/s/ David G. Browne